

Ilene J. Feldman, Esq. (IF1045)
COLLINS & FELDMAN
Attorneys for Third-Party Defendant BNSF Railway Company
20 Vesey Street, Suite 503
New York, New York 10007
(866) 434-4440
and
325 Reef Road, Suite 105
Fairfield, CT 06824
(203) 254-2277

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
FEDERAL INSURANCE COMPANY,	:	
	:	ECF CASE
Plaintiff,	:	
	:	07 Civ. 3166
v.	:	
	:	Judge Castel
EXPEDITORS INTERNATIONAL OF	:	
WASHINGTON, INC., EXPEDITORS	:	
INTERNATIONAL OCEAN; EXPEDITORS	:	
INTERNATIONAL FRANCE SAS,	:	
	:	
Defendants.	:	
-----X		
EXPEDITORS INTERNATIONAL OF	:	
WASHINGTON, INC., EXPEDITORS	:	
INTERNATIONAL OCEAN; EXPEDITORS	:	
INTERNATIONAL FRANCE SAS,	:	
	:	
Third-Party Plaintiffs,	:	
v.	:	
	:	
EXPEDITORS INTERNATIONAL OF	:	
WASHINGTON, INC., EXPEDITORS	:	
INTERNATIONAL OCEAN; EXPEDITORS	:	
INTERNATIONAL FRANCE SAS,	:	
	:	
Third-Party Defendants.	:	
-----X		

ANSWER AND AFFIRMATIVE DEFENSES
OF THIRD-PARTY DEFENDANT BNSF RAILWAY COMPANY

Third-Party Defendant BNSF Railway Company (“BNSF”) by its attorneys, Collins & Feldman, for its Answer and Affirmative Defenses to the Third-Party Complaint alleges upon information and belief:

1. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.
2. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 2 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.
3. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.
4. BNSF admits that it is a corporation, a rail carrier and that it has an office and place of business in Topeka, Kansas. BNSF denies the remaining allegations contained in Paragraph 4 of the Third-Party Complaint. .
5. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.
6. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 6 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

7. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 7 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

8. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

9. BNSF denies the allegations contained in Paragraph 9 of the Third-Party Complaint.

10. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 10 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

11. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 11 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

12. BNSF denies knowledge or information sufficient to admit or deny the allegations contained in Paragraph 12 of the Third-Party Complaint and therefore denies the same and leaves Third-Party Plaintiffs to their proof.

13. BNSF denies the allegations contained in Paragraph 13 of the Third-Party Complaint.

14. BNSF denies the allegations contained in Paragraph 14 of the Third-Party Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15. In the event that the plaintiff or Third-Party Plaintiff have not or has not any title or interest in the shipments that are the subject of this action, then neither plaintiff nor Third-Party Plaintiffs are the real party in interest herein and are not entitled to maintain this suit.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16. The shipment referred to in the Third-Party Complaint was loaded and counted by the shipper and/or its agent. BNSF is not responsible for any damage to such shipment caused by the improper loading thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. BNSF is not responsible for any loss or damage or delay, such loss, damage or delay was caused by parties over whom it had no control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18. In the event that that the plaintiffs and/or Third-Party Defendants failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

19. In the event that plaintiffs and/or Third-Party Defendants failed to file suit within the period prescribed, this lawsuit is time barred.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

20. The Third-Party Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

21. The contract of carriage does not contemplate responsibility for special damages or lost profits. To the extent that plaintiffs and/or Third-Party Plaintiffs seek recovery for such damages, BNSF is not responsible.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

22. In the event that said shipment moved subject to any statutory or contractual

limitations of liability, either specifically agreed to or contained in any applicable tariffs and/or governing publications, neither plaintiffs nor Third-Party Plaintiffs may recover in excess of such limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

39. Plaintiffs' and Third-Party Plaintiffs' state law claims are preempted by federal law.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

40. To the extent that the Plaintiffs and/or Third-Party Plaintiffs have failed to mitigate their damages, such damages are proscribed from being recovered.

Wherefore, BNSF demands judgment: 1. dismissing the Third-Party Complaint with prejudice together with costs, disbursements and reasonable counsel fees; and 2. for such other relief this Court may deem just and proper.

Dated: September 4, 2007

By /s/ Ilene J. Feldman
Ilene J. Feldman, Esq. (IF1045)
COLLINS & FELDMAN
Attorneys for Third-Party Defendant
BNSF Railway Company
20 Vesey Street, Suite 503
New York, New York 10007
(866) 434-4440
and
325 Reef Road, Suite 105
Fairfield, CT 06824
(203) 254-2277

To: David L. Mazaroli, Esq. (DM-2929)
11 Park Place, Suite 1214
New York, New York 10007-2801

Attorneys for Plaintiff

Jim Krauzlis, Esq.
Badiak & Will, LLP
106 Third Street
Mineola, New York 11501-4404

Attorneys for Defendants and Third Party Plaintiffs